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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,240	11/25/2003	Roger A. Duman	G180.147.101 / GM16164	6664
25281	7590	03/15/2005	EXAMINER	
DICKE, BILLIG & CZAJA, P.L.L.C.			DEVORE, PETER T	
FIFTH STREET TOWERS			ART UNIT	
100 SOUTH FIFTH STREET, SUITE 2250			PAPER NUMBER	
MINNEAPOLIS, MN 55402			3751	

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/722,240	DUMAN, ROGER A.	
	Examiner	Art Unit	
	Peter T deVore	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 10, 30 and 47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-13, 15-29, 31, 32, 38-46, 48, 49 is/are rejected.
- 7) ☒ Claim(s) 14 and 33-37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 10, 30, and 47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/10/05.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 11-13, 15-18, 20-24, 26-29, 31, 32, 40-42, 44, 45, 46, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carter in view of Randrup.

The Carter reference discloses a container filling system comprising a container loading station (see col. 5, lines 9-11), a container filling station (machine centered at N), and a drive system comprising a carrier plate C, but does not disclose a mounting piece/base on the carrier plate engaging a longitudinal recess on the container.

However, the Randrup reference discloses a similar drive system including a mounting piece 32 engaging a longitudinal recess 30 in the container for improved securement of the container, and it would have been obvious to employ a mounting piece/base on the carrier plate engaging a longitudinal recess in the containers of the Carter filling

machine in view of the teachings of Randrup for improved securement of the containers. Regarding claim 42, although Carter remains silent as to the product dispensed, the Examiner takes Official Notice that yogurt containers are but one of many consumer liquid containers that are mass-produced by filling machines such as the Carter filling machine. Therefore, it would have been obvious to select production of yogurt containers with the modified Carter device, as the modified Carter device would work equally well to produce any of the known mass-produced liquid containers. Regarding claim 32, although Randrup remains silent as the height of the base, it would have been obvious to make the base with a height in the range of 0.1-0.4 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 2336. Regarding claims 1-9, 11-13, 15-24, the claimed methods are inherently performed during the normal use of the modified Carter device.

Claims 19, 38, 39, and 48 rejected under 35 U.S.C. 103(a) as being unpatentable over Carter in view of Randrup as applied to claims 1 and 26 above, and further in view of Peronek.

The Carter reference discloses a filling machine as discussed supra, but does not disclose reverse frustoconical mounting pieces or a plurality of mounting pieces per carrier plate. However, the Peronek reference discloses a similar filling machine including a plurality of mounting pieces having a reverse frustoconical shape on each carrier plate (see Figure 6 and 7) for improved securement of the containers. It would have been obvious to employ a plurality of mounting pieces having a reverse

frustoconical shape on the modified Carter device in view of Perenek for improved securement of the containers. Regarding claim 19, the claimed method is inherently performed during the normal use of the modified Carter device.

Claims 25 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carter in view of Randrup as applied to claims 21 and 26 above, and further in view of Gibble.

The Carter reference discloses a filling machine as discussed supra, but does not a covering station. However, the Gibble reference discloses a similar filling system including wherein the drive device takes the filled containers to covering station 20 for convenient covering of the containers after filling. It would have been obvious to modify the modified Carter to device so that the drive device takes filled containers to a covering station for convenient covering of the containers after filling. Regarding claim 19, the claimed method is inherently performed during the normal use of the modified Carter device.

Allowable Subject Matter

Claims 14 and 33-37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Sweeny, Martin, and Nosch reference disclose similar filling systems with mounting pieces.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pd *PJ*

Peter T deVore